

HOME PROPERTIES INC

Form S-3ASR

February 28, 2013

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

HOME PROPERTIES, INC.

(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of incorporation or organization)

16-1455126

(I.R.S. Employer Identification No.)

850 Clinton Square

Rochester, New York 14604

(585) 546-4900

(Address, including zip code, and telephone number, including
area code, of registrant's principal executive offices)

Ann M. McCormick, Esq.
Executive Vice President, Secretary
and General Counsel
Home Properties, Inc.
850 Clinton Square
Rochester, New York 14604
(585) 546-4900
Facsimile (585) 232-3147

(Names, addresses, including zip codes, and telephone numbers, including
area codes, of agents for service)

Copies to:

Deborah J. McLean, Esq.
Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604

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(585) 263-1307

Facsimile (866) 947-0724

Approximate date of commencement of proposed sale to public: From time to time after the effective date of this Registration Statement.

If only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. *

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. T

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, please check the following box and list the Securities Act of 1933 registration statement number of the earlier registration statement for the same offering. *

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier registration statement for the same offering. *

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box. T

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. *

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered (1)(2)	Proposed Maximum Offering Price Per Unit or Share(1)	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee (1)
Common Stock, \$.01 par value per share	-	-	-	-
Preferred Stock, \$.01 par value per share	-	-	-	-
Debt Securities	-	-	-	-
Total				\$ (1)

(1) An unspecified aggregate initial offering price or number of the securities of each identified class is being registered as may from time to time be offered at unspecified prices. The securities registered also include such unspecified amounts and numbers of common stock, preferred stock and debt securities as may be issued upon conversion of or exchange for preferred stock or debt securities that provide for conversion or exchange or pursuant to the antidilution provisions of any such securities and as may be issued in exchange for units of limited partnership. Separate consideration may or may not be received for securities that are issuable on exercise, conversion or exchange of other securities or that are issued in units. In accordance with Rules 456(b) and 457(r) under the Securities Act, Home Properties, Inc. is deferring payment of all of the registration fee, except as may be carried forward on specific prospectus supplements hereto that has already been paid with respect to securities that were previously registered pursuant to Registration Statement No. 333-165165, filed on March 3, 2010, and were not sold thereunder. Pursuant to Rule 457(p) under the Securities Act, such unutilized filing fee may be applied to the filing fee payable pursuant to this registration statement.

(2) Any securities registered hereunder may be sold separately or as units comprised of more than one type of securities registered hereunder.

PROSPECTUS

Common Stock
Preferred Stock
Debt Securities

We may offer and sell the securities listed above from time to time, together or separately, in one or more classes or series, in amounts, at prices and on terms that we will determine at the time of offering. We will provide the specific terms of any securities we actually offer for sale in supplements to this prospectus. Certain of our shares of common stock may also be offered and sold from time by selling security holders on terms described in the applicable prospectus supplement.

This prospectus describes some of the general terms that may apply to the securities we or our selling securities holders may offer or sell from time to time. We will provide prospectus supplements and other materials at later dates which will contain the specific terms of that issuance of our securities. You should read this prospectus and the accompanying prospectus supplement carefully before you purchase any of our securities. **THIS PROSPECTUS MAY NOT BE USED TO SELL SECURITIES UNLESS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.**

We may offer and sell the securities directly to you, through agents we select, or through underwriters or dealers we select. If we use agents, underwriters or dealers to sell the securities, we will name them and describe their compensation in a prospectus supplement. The net proceeds we expect to receive from such sales will be set forth in the prospectus supplement.

If this prospectus is used by selling securities holders, they may offer or sell the shares of common stock they own in the same manner as our sales or as described in the applicable prospectus supplement. We will not receive any proceeds from the sale of our common stock by selling securities holders.

Our common stock is listed on the New York Stock Exchange under the symbol "HME".

Investing in our securities involves various risks. See "Risk Factors" beginning on page 1.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

The date of the prospectus is February 28, 2013.

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(i)

References to “Home Properties,” “we” or “us” in this prospectus mean, unless the context otherwise requires, Home Properties, Inc., a Maryland corporation, Home Properties, L.P., a New York limited partnership (the “Operating Partnership”), and their subsidiaries.

HOME PROPERTIES

Home Properties is a self-administered and self-managed real estate investment trust, or a REIT. We own, operate, acquire, develop and rehabilitate apartment communities. Our properties are regionally focused, primarily in select Northeast and Mid-Atlantic regions of the United States. We were formed in November 1993.

We conduct our business through Home Properties, L.P., which we refer to as the Operating Partnership, a New York limited partnership, and a management company, Home Properties Resident Services, Inc., a Maryland corporation. We held a 83.2% partnership interest as of December 31, 2012 (we calculated our interest as a percentage of our outstanding shares of common stock divided by the total number of outstanding shares of common stock and limited partnership units in the Operating Partnership).

As of December 31, 2012, we owned and operated 121 communities with 42,635 apartment units.

Our principal executive offices are located at 850 Clinton Square, Rochester, New York 14604. Our telephone number is (585) 246-4900.

RISK FACTORS

Our business is subject to uncertainties and risks. Please carefully consider the risk factors described in our periodic reports filed with the Securities and Exchange Commission, including the risk factors incorporated by reference from our most recent annual report on Form 10-K, as updated by our quarterly reports on Form 10-Q, as well as other information we include or incorporate by reference in this prospectus. See “Where You Can Find More Information” below. The prospectus supplement with respect to any securities issued under this prospectus may also disclose additional risk factors. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations. The risk factors we describe contain or refer to certain forward-looking statements. You should review the explanation of the limitations of forward-looking statements contained in the “Special Note Regarding Forward-Looking Statements.”

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement filed by us with the Securities and Exchange Commission, or SEC. You should read this prospectus together with the applicable prospectus supplement and additional information described under the heading “Where You Can Find More Information.” You should rely only on the information incorporated by reference or provided in this prospectus or the applicable prospectus supplement. We have not, no selling shareholder has, and no underwriter has authorized anyone else to provide you with different or additional information. We or any selling securities holders are not, and the underwriter is not, making an offer of the shares in any jurisdiction where the offer or sale is not permitted.

You should not assume that the information in this prospectus is accurate as of any date other than the date on the front of this prospectus. Other information filed by us with the SEC is incorporated into this prospectus by reference. You should assume that the reports and documents incorporated by reference are accurate only as of their respective dates. Our business, financial condition, liquidity, results of operations, risk factors and forward-looking information may have changed since these dates.

Documents which are exhibits to or incorporated by reference into this prospectus and the reports incorporated by reference may contain representations, warranties and agreements. Those representations, warranties and agreements were made solely for the benefit of the parties to those documents and may be subject to qualifications and limitations, and are not a representation, warranty or agreement for your benefit.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the information incorporated by reference herein include “forward-looking statements” within the meaning of the safe harbor provisions of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Some examples of forward-looking statements include statements related to acquisitions (including any related pro forma financial information), future capital expenditures, potential development and redevelopment opportunities, projected costs and rental rates for development and redevelopment projects, financing sources and availability, and the effects of environmental and other regulations on our business or prospects. Although we believe that the expectations reflected in those forward-looking statements are based upon reasonable assumptions, those statements are subject to known and unknown uncertainties, including risks which we believe are not currently material to our business and prospects but that may adversely affect our results or operations in the future. The actual events or results may differ materially and we can give no assurance that our expectations will be achieved. Some of the words used to identify forward-looking statements include “believes,” “anticipates,” “plans,” “expects,” “seeks,” “estimates,” and similar expressions. Information v is not based on historical facts is forward-looking and is not a representation that the results or conditions described in such statements will be achieved or that our current plans and objections will be realized. You should exercise caution in interpreting forward-looking statements because they involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond our control and which could materially affect our actual results, performance or achievements.

Factors that may cause our actual results to differ materially from our stated expectations include, among others:

- general economic conditions,
- local real estate conditions in the markets where our properties are located,
- the weather and other conditions that might affect operating expenses,
- the timely completion of repositioning activities and development within anticipated budgets,
- the actual pace of future development, acquisitions and sales, and
- continued access to capital to fund growth.

For a more detailed discussion of some of the risk factors we have identified, see the section entitled “Risk Factors” below as well as the risks described in our periodic reports incorporated by reference in this prospectus. You are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date they are made. We do not undertake to update our forward-looking statements to reflect the impact of circumstances or events that arise after the date of the forward-looking statements, except as required by applicable law.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy reports, statements or other information at the SEC’s public reference facilities in Washington D.C., at 100 F Street, N.E., Washington D.C. 20549. You may call the SEC at 1-800-SEC-0330 for further information on the public reference facilities. Our SEC filings are also available to the public from commercial document retrieval services and at the web site maintained by the SEC at <http://www.sec.gov>. You can also review copies of our SEC filings at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005. You may also find copies of our periodic reports, proxy statements and other SEC filings on our website at www.homeproperties.com

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(information on our website is not part of or incorporated by reference in this prospectus).

We have filed with the SEC a registration statement on Form S-3 to register the securities. This prospectus is part of that registration statement and, as permitted by the SEC's rules, does not contain all the information set forth in the registration statement. For further information you may refer to the registration statement and to the

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exhibits and schedules filed as part of the registration statement. You can review and copy the registration statement and its exhibits and schedules at the public reference facilities maintained by the SEC as described above. The registration statement, including its exhibits and schedules, is also available on the SEC's web site. We will also file and distribute a prospectus supplement with respect to any securities we, or a selling securities holder, may sell under the registration statement. This prospectus must be read with the applicable prospectus supplement.

The SEC allows us to "incorporate by reference" into this prospectus information in other documents we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus and the information that we file with the SEC later will automatically update and supersede this information. We incorporate by reference the documents listed below, as amended, and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules):

- Annual Report on Form 10-K for the year ended December 31, 2012, and filed with the SEC on February 22, 2013;
- Our definitive Proxy Statement dated March 30, 2012, and filed with the SEC on March 29, 2012, in connection with our Annual Meeting of Stockholders held on May 1, 2012;
 - Current Reports on Form 8-K filed on January 3, 2013 and February 14, 2013; and
- The description of the common stock set forth in our registration statement on Form 8-A, dated June 8, 1994, including all amendments and reports filed for the purpose of updating that description.

Information in this prospectus supersedes related information in the documents listed above, and information incorporated herein from subsequently filed documents supersedes related information in this prospectus and the previously incorporated documents.

You may request a copy of these filings, other than an exhibit to a filing unless that exhibit is specifically incorporated by reference into that filing, at no cost, by writing to or calling us at the following address:

Home Properties, Inc.
Attention: Investor Relations
850 Clinton Square
Rochester, New York 14604
Telephone number: (585) 546-4900

USE OF PROCEEDS

Unless otherwise specified in a prospectus supplement, we intend to use the net proceeds from the sale of the securities offered by this prospectus and any accompanying prospectus supplement for general corporate purposes, which may include the repayment of indebtedness, working capital, capital expenditures, acquisitions and the repurchase of shares of our equity securities, or such other purposes as may be specified in the applicable prospectus supplement. Pending use for these purposes, we may invest proceeds from the sale of the securities in short-term marketable securities. The precise amount and timing of sales of any securities will be dependent on market conditions and the availability and cost of other funds to us.

If selling securities holders make offers and sales pursuant to this prospectus and an applicable prospectus supplement, we will not receive any of the proceeds of that offering. We will incur certain expenses in connection with the

registration with the SEC of the securities to be sold by the selling securities holders and preparation of the applicable prospectus supplement pursuant to the terms of certain agreements we made with those securities holders at the time they acquired their securities.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our ratio of earnings to fixed charges for each of the periods indicated. For purposes of calculating this ratio, earnings consist of income (loss) before income taxes, plus fixed charges, less capitalized interest. Fixed charges include interest expense (including the amortization of debt issuance costs), the portion of rent expense representative of the interest factor, and capitalized interest.

Year Ended December 31,				
2008	2009	2010	2011	2012
1.28x	1.12x	1.11x	1.29x	1.58x

Additional information regarding the calculation of the ratio of earnings to fixed charges is contained in the “Statement of Computation of Ratio of Earnings to Fixed Charges and Ratio of Earnings to Combined Fixed Charges and Preferred Dividends” filed as Exhibit 12.1 to the registration statement of which this prospectus forms a part. See “Where You Can Find More Information” above.

RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

The following table sets forth our ratio of earnings to combined fixed charges and preferred stock dividends for each of the periods indicated is as follows:

Year Ended December 31,				
2008	2009	2010	2011	2012
1.28x	1.12x	1.11x	1.29x	1.58x

The ratios of earnings to combined fixed charges and preferred stock dividends were computed by dividing earnings by combined fixed charges and preferred stock dividends. For this purpose, earnings consist of pre-tax income from continuing operations before adjustment for noncontrolling interests in consolidated subsidiaries plus fixed charges less capitalized interest. Fixed charges consist of interest expense (including the amortization of debt issuance costs), the portion of rent expense representative of the interest factor, and capitalized interest.

During the five year period covered by the table above, no series of our preferred stock was outstanding.

Additional information regarding the calculation of the ratio of earnings to combined fixed charges and preferred stock dividends is contained in the “Statement of Computation of Ratio of Earnings to Fixed Charges and Ratio of Earnings to Combined Fixed Charges and Preferred Dividends” filed as Exhibit 12.1 to the registration statement of which this prospectus forms a part. See “Where You Can Find More Information” above.

DESCRIPTION OF CAPITAL STOCK

The authorized capital stock of Home Properties consists of:

- 80 million shares of common stock, \$0.01 par value, of which 51,535,219 shares were outstanding on February 14, 2013;
- 10 million shares of preferred stock, \$0.01 par value, none of which were outstanding as of February 14, 2013.
- 10 million shares of “excess stock,” \$0.01 par value, none of which were outstanding on February 14, 2013.

For more detail about our Articles of Amendment and Restatement of Articles of Incorporation, as amended (sometimes referred to as our “Articles of Incorporation” or “charter”) and bylaws you should refer to the charter and bylaws, which have been filed as exhibits to other reports incorporated by reference into this prospectus.

In addition, for a discussion of limitations on the ownership of our capital stock, you should refer to the section entitled “Restrictions on Transfer; Ownership Limits” in this prospectus.

Common Stock

General

All of the shares of common stock offered by this prospectus will be duly authorized, fully paid, and nonassessable when issued. Holders of the common stock have no conversion, redemption, sinking fund or preemptive rights; however, shares of common stock in excess of certain ownership limits automatically convert into shares of Excess Stock as defined below. Under the Maryland General Corporation Law (“MGCL”), stockholders are generally not liable for our debts or obligations, and the holders of shares will not be liable for further calls or assessments by us. Subject to the provisions of our Articles of Incorporation regarding Excess Stock, described below, all shares of common stock have equal dividend, distribution, liquidation and other rights and will have no preference or exchange rights.

Distributions

Subject to the right of holders of Preferred Stock outstanding from time to time to receive preferential distributions, holders of shares of common stock are entitled to receive distributions in the form of dividends if and when declared by our Board of Directors out of funds legally available for that purpose, and, upon liquidation of Home Properties, each outstanding share of common stock will be entitled to participate pro rata in the assets remaining after payment of, or adequate provision for, all of our known debts and liabilities, including debts and liabilities arising out of our status as general partner of the Operating Partnership, and any liquidation preference of issued and outstanding Preferred Stock. We intend to continue paying quarterly distributions.

Voting Rights

The holder of each outstanding share of common stock is entitled to one vote on all matters presented to stockholders for a vote, subject to the provisions of our Articles of Incorporation regarding Excess Stock described below. As described below, our Board of Directors has, and may in the future, grant holders of one or more series of Preferred Stock the right to vote with respect to certain matters when it fixes the attributes of such series of Preferred Stock. Pursuant to the MGCL, we cannot dissolve, amend our charter, merge with or into another entity, sell all or substantially all our assets, engage in a share exchange or engage in similar transactions unless such action is approved by stockholders holding a majority of the outstanding shares entitled to vote on such matter. In addition, the Second Amended and Restated Partnership Agreement of the Operating Partnership, as amended, requires that any merger or sale of all or substantially all of the assets of Operating Partnership be approved by partners holding a majority of the outstanding Units, excluding Operating Partnership Units held by us, directly or indirectly. Our Articles of Incorporation provide that our Bylaws may be amended by our Board of Directors.

The holder of each outstanding share of common stock is entitled to one vote in the election of directors who serve for terms of one year. Holders of the shares of common stock will have no right to cumulative voting for the election of directors. Consequently, at each annual meeting of stockholders, the holders of a majority of the shares entitled to vote in the election of directors will be able to elect all of the directors, subject to certain rights of the holders of preferred stock, described below. Directors may be removed only for cause and only with the affirmative vote of the holders of a majority of the shares entitled to vote in the election of directors.

Restrictions on Ownership

In order for us to maintain our status as a REIT under the Code, there are restrictions on the concentration of ownership of our capital stock. See the description under “Excess Stock – Ownership Limits” below.

Preferred Stock

General

We may issue shares of preferred stock from time to time, in one or more series, as authorized by our Board of Directors. The Board of Directors will fix the attributes of any preferred stock that it authorizes for issuance. Because the Board of Directors has the power to establish the preferences and rights of each series of preferred stock, it may afford the holders of any series of preferred stock preferences, powers and rights, voting or otherwise, senior to the rights of holders of shares of common stock. The issuance of preferred stock could have the effect of delaying, deferring or preventing a change in control of Home Properties.

Terms

We will include in the prospectus supplement relating to any offering of a series of preferred stock the specific terms of that series, including:

- its title and stated value;
- the number of shares of preferred stock offered, the liquidation preference per share, if applicable, and the offering price;
 - the applicable dividend rate or amount, period and payment date or method of calculation thereof;
 - the date from which dividends on that series preferred stock shall accumulate, if applicable;
 - any procedures for auction and remarketing;
 - any provision for a sinking fund;
 - any applicable provision for redemption of that series of preferred stock;
- the terms of any preference of the offered series of preferred stock over other capital stock in the payment of distributions or upon our liquidation;
- the terms and conditions of conversion into common stock or any other of securities, including the conversion price or rate or manner of calculation thereof;
- the relative ranking and preference as to dividend rights and rights upon our liquidation, dissolution or the winding up of our affairs;
- any limitations on issuance of any series of preferred stock ranking senior to or on a parity with such series of preferred stock as to dividend rights and rights upon our liquidation, dissolution or the winding up of our affairs;
- any limitations on direct or beneficial ownership and restrictions on transfer, in each case as may be appropriate to preserve our status as a REIT; and
 - any other specific terms, preferences, rights, limitations or restrictions.

Excess Stock

Ownership Limits

Our charter contains certain restrictions on the number of shares of capital stock that stockholders may own. For us to qualify as a REIT under the Code, no more than 50% in value of our outstanding shares of capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year or during a proportionate part of a shorter taxable year. The shares of our capital stock must also be beneficially owned by 100 or more persons during at least 335 days of a taxable year or during a proportionate part of a shorter taxable year. Because we expect to continue to qualify as a REIT, our charter contains restrictions on the ownership and transfer of shares of our capital stock intended to ensure compliance with these requirements. Subject to certain exceptions specified in the charter, no holder may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 8.0%, referred to as the Ownership Limit, of the value of the issued and outstanding shares of our capital stock. Certain entities, such as qualified pension plans, are treated as if their beneficial owners were the holders of the common stock held by such entities. Certain holders are accepted from the Ownership Limit in our charter. Others may be accepted by action of our Board of Directors.

Our Board of Directors may increase or decrease the Ownership Limit from time to time, but may not do so to the extent that after giving effect to such increase or decrease: (i) five beneficial owners of Shares could beneficially own in the aggregate more than 49.5% of the aggregate value of our outstanding capital or (ii) any beneficial owner of capital stock would violate the Ownership Limit as a result of a decrease. The Board of Directors may waive the Ownership Limit with respect to a holder if such holder provides evidence acceptable to the Board of Directors that such holder's ownership will not jeopardize our status as a REIT. Waivers of the Ownership Limit have been granted to certain institutional investors in connection with prior sales of our certain series of our Preferred Stock, none of which are currently outstanding.

Any transfer of our outstanding capital stock that would:

- cause any holder, directly or by attribution, to own capital stock having a value in excess of the Ownership Limit,
 - result in shares of capital stock other than Excess Stock, if any, to be owned by fewer than 100 persons,
 - result in our being closely held within the meaning of section 856(h) of the Code, or
 - otherwise prevent us from satisfying any criteria necessary for us to qualify as a REIT,

is null and void, and the purported transferee acquires no rights to such outstanding capital stock.

Conversion to Excess Shares

Outstanding stock owned by or attributable to a stockholder or shares purportedly transferred to a holder which cause such holder or any other holder to own shares of capital stock in excess of the Ownership Limit automatically convert into shares of Excess Stock. Upon issuance, Excess Stock is transferred by operation of law to a separate trust, with Home Properties acting as trustee, for the exclusive benefit of the person to whom such outstanding stock may be ultimately transferred without violating the Ownership Limit. Excess Stock is not treasury stock, but rather constitutes a separate class of issued and outstanding stock of Home Properties. While the Excess Stock is held in trust, it is not entitled to vote, is not considered for purposes of any stockholder vote or the determination of a quorum for such vote and is not entitled to participate in dividends or other distributions. Any record owner or purported transferee of stock which has converted into Excess Stock who receives a distribution prior to our discovery that such

stock has been converted into Excess Stock must repay such dividend or distribution upon demand.

Repurchase Right with Respect to Excess Stock

While Excess Stock is held in trust, we will have the right to purchase it from the trust for the lesser of:

- the price paid for the Outstanding Stock which con